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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Review of the Pioneer's Preference )  
Rules )

ET Docket No. 93-266

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS OF TRW INC.

TRW Inc. ("TRW"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby replies to the comments that were filed in response to the Commission's notice of proposed rule making in the above-captioned proceeding, Review of the Pioneer's Preference Rules, FCC 93-477 (released October 21, 1993) ("NPRM").

I. INTRODUCTION

Thirty-seven parties filed comments in response to the NPRM. Approximately three fourths of those parties advocated retention of the Commission's pioneer's preference regulations, while the remaining parties called for their repeal. In its Comments, TRW took no direct position on the Commission's substantive proposals to reform the pioneer's preference regulations. Instead, it argued that the Commission should not

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allow any action it may take in the instant proceeding to affirm, modify or repeal its pioneer's preference rules to delay or impede the issuance of a Report and Order finalizing the Commission's Tentative Decision in ET Docket No. 92-28.<sup>1/</sup>

With the single exception of the comments filed by Motorola Satellite Communications, Inc. ("Motorola"), no party advocated a position inconsistent with TRW's belief that the pioneer's preference reform proceeding should not be allowed to disrupt the conclusion of the Commission's proceeding in ET Docket No. 92-28. Motorola, rather than limiting itself to the issues raised in the NPRM, saw and seized a chance to restate its claim of entitlement to a pioneer's preference in ET Docket No. 92-28 -- a claim the Commission tentatively but soundly rejected in the MSS/RDSS Band Allocation NPRM. It devoted the majority of its filing to a substantive diatribe on the merits of its failed pioneer's preference request.

In these Reply Comments, TRW demonstrates that the Motorola's "grant-my-preference" argument has no place in this

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<sup>1/</sup> See TRW Comments at 4-5; Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-geostationary Satellites, 7 FCC Rcd 6414 (1992) ("MSS/RDSS Band Allocation NPRM"). In the MSS/RDSS Band Allocation NPRM, the Commission decided not to award a pioneer's preference to any of the five parties who had requested a preference in that proceeding.

proceeding. It is inapposite to the questions posed in the NPRM, and utterly devoid of merit. In addition, TRW shows that a Commission decision not to disturb the Tentative Decision it made in the MSS/RDSS Band Allocation NPRM would be consistent with the positions of all of the other parties to this proceeding.

## II. DISCUSSION

### A. The Commission Must Disregard The Misplaced And Self-Serving Arguments Motorola Made As To The Pioneer's Preference Request For "Iridium" That The Commission Tentatively Denied In ET Docket No. 92-28.

In its NPRM, the Commission noted that several rulemaking proceedings involving pioneer's preference requests are either ongoing or have already seen the finalization of pioneer's preference awards. The Commission proposed not to disturb the completed proceedings, but sought comment on whether any modification or repeal of its pioneer's preference regulations should apply to the proceedings that are ongoing. One of those ongoing proceedings is the spectrum allocation proceeding in ET Docket No. 92-28 -- where the Commission has issued the MSS/RDSS Band Allocation NPRM. See NPRM, FCC 93-477, slip op. at 8-9 & n.20.

In its Comments, TRW responded to the Commission's narrowly-crafted inquiry, and called upon the Commission to leave undisturbed the August 1992 Tentative Decision not to award a pioneer's preference to TRW, Motorola, or any of the three other parties to that proceeding that had filed pioneer's preference requests. It also provided a number of reasons why the revisiting of that action would be contrary to the public interest. See TRW Comments at 5.

Motorola took a different approach. Like many other parties, Motorola opined that the Commission's proposed adoption of a competitive bidding mechanism for license assignment<sup>2/</sup> has no effect on the pioneer's preference rules and that the rules themselves have salutary effects on the development of new technologies and services. See Motorola Comments at 7, 9. Whether one agrees with, disagrees with, or (as did TRW) takes no position on the purported need to revise or repeal the current rules, there is no question that Motorola's call for retention of the pioneer's preference policies and regulations as they exist today (see Motorola Comments at 7-9) is responsive to the Commission's NPRM.

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<sup>2/</sup> See Implementation of Section 309(j) of the Communications Act, Competitive Bidding, FCC 93-455 (released October 12, 1993) (notice of proposed rule making).

If this were all Motorola did, TRW would not be filing this response. It seems, however, that Motorola, ever opportunistic and willing to act in overt derogation of the Commission's rules, took it upon itself to devote the majority of its Comments to an argument that the Commission "should award Motorola a pioneer's preference for the substantial innovations associated with the IRIDIUM™ system." Motorola Comments at 10. See id. at 3-7.

Motorola's subjective pioneer's preference claims add nothing whatsoever to the resolution of the issues the Commission has presented in the instant proceeding. They do not address the need to change the substantive or procedural aspects of the current regulations, and they do not relate at all to the "grandfathering" question posed in Paragraph 19 of the NPRM. Indeed, if they are intended, as they appear to be, to influence the Commission's decisionmaking process on the uncompleted proceedings in ET Docket No. 92-28, Motorola's pioneer's preference assertions are both inexcusably late-filed and unlawfully ex parte.<sup>3/</sup>

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<sup>3/</sup> See 47 C.F.R. § 1.415(d). See also 47 C.F.R. §§ 1.1201, 1.1202, 1.1208.

For both of these reasons, TRW will not clutter the record with a refutation of Motorola's assertions.<sup>4/</sup> Suffice it to say that Motorola should not be dubbed an "innovator" merely on the strength of its contentions, even if true, that it started thinking about an MSS/RDSS system before any of the other applicants and that it has spent substantially more money than any of them to date. See Motorola Comments at 6. Clearly, it takes more than time and money (more even than lots of time and money) to demonstrate the requisite degree of "innovativeness" under the current standard.<sup>5/</sup>

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<sup>4/</sup> TRW must, nevertheless, respond to Motorola's offer to demonstrate its entitlement to a pioneer's preference by "submitting . . . highly proprietary data to the Commission on a confidential basis." Motorola Comments at 4 n.4. During the proceedings in ET Docket No. 92-28 last year, Motorola was forced to disclose materials it had submitted under a request for confidential treatment -- materials that were purported to demonstrate unequivocally its entitlement to a preference -- or withdraw them from the record. It chose, after the issuance of a protective order, to put the materials out for comment. The materials not only turned out to be irrelevant, they actually exposed a number of key weaknesses in the design of Motorola's proposed Iridium system. TRW is simply incredulous that Motorola is offering to do again something that made it a laughingstock just 18 months ago. TRW will oppose any Motorola attempt to expand the record in ET Docket No. 92-28 at this late date.

<sup>5/</sup> TRW, of course, has responded in full to Motorola's claims during the course of the ET Docket No. 92-28 proceeding. See, e.g., Consolidated Reply Comments of TRW Inc., ET Docket No. 92-28, PP-29-33 (filed April 23, 1992); Reply Comments of TRW Inc. on Late-Filed Comment Information of Motorola Satellite Communications, Inc., ET Docket No. 92-28, PP-32 (filed June 12, 1992). Its Comments in support of the Commission's Tentative Decision to deny Motorola's

(continued...)

In short, Motorola's attempt to demonstrate its subjective entitlement to a pioneer's preference in ET Docket No. 92-28 is nothing more than shameless self-promotion, and is very likely unlawful. Clearly Motorola has added nothing to the debate on the issues presented in the NPRM. TRW urges the Commission not to let Motorola's inappropriate tactics dissuade it from concluding that whatever rule modifications are adopted in this proceeding will not be allowed to impede or delay the issuance of a Report and Order finalizing the Tentative Decision in the MSS/RDSS Band Allocation NPRM.

**B. Nothing In Any Of The Other Comments Is Inconsistent With TRW's Showing That Modification Or Repeal Of The Pioneer's Preference Rules Need Not Delay Or Impede Finalization Of The Tentative Decision In ET Docket No. 92-28.**

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As TRW noted at the outset, there was a roughly 75/25 split in opinion among those parties who favored retention (or retention and minor modification) of the pioneer's preference rules, and those who called for their repeal. The commenters in the former group either expressed support for the Commission's proposal not to disturb the proceedings (e.g., ET Docket No. 92-

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<sup>5/</sup> (...continued)

pioneer's preference request also remain pending in ET Docket No. 92-28.

28) where tentative or even final pioneer's preference determinations had already been made, or were silent on the issue. See, e.g., Comments of American Personal Communications at 8-11; Comments of In-Flight Phone Corp. at 6-7. Several of the commenters in the latter group, however, also either called for no retroactive application of new or repealed pioneer's preference rules, or too were silent. See, e.g., Comments of Henry Geller at 5-6.

The fact of the matter is that no party other than Motorola (whose views can be disregarded for reasons that were noted above) should object if the Commission were to finalize the Tentative Decision it made on the pioneer's preferences in ET Docket No. 92-28. Whether a party supports retention of the current rules or supports their repeal, it should not be disturbed by a Commission decision that finalizes the denial of a pioneer's preference to each of the five parties in ET Docket No. 92-28 that requested one. The Commission's Tentative Decision in the MSS/RDSS Band Allocation NPRM was based on the current rules, and its finalization would not lead to a result that would offend proponents of the rules' repeal.

In short, no matter what else the Commission may decide to do with those proceedings that have seen tentative decisions



to award pioneer's preferences, it should determine that the finalization of the Tentative Decision in ET Docket No. 92-28 not to award a pioneer's preference to any of the five applicants would be undisturbed by any conceivable outcome of the instant proceeding.<sup>6/</sup>

### III. CONCLUSION

None of the comments properly filed in this proceeding support a result inconsistent with the one called for in TRW's Comments. Thus, the Commission should not allow its proposed revision to the pioneer's preference rules to lead to a revisiting of the Tentative Decision it made in the MSS/RDSS Band Allocation NPRM. Indeed, the Commission should in no way allow


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<sup>6/</sup> Of course, if the Commission were to contemplate reversing the Tentative Decision it made in the MSS/RDSS Band Allocation NPRM, that would be a different matter altogether. In that case, TRW would be forced to reiterate and pursue its challenges to the lawfulness of pioneer's preferences in proceedings where preference requests have been filed by parties with mutually exclusive applications pending before the Commission. Though the Commission rejected TRW's arguments in its first pioneer's preference rulemaking proceeding -- a proceeding that concluded just eight months ago -- the courts were not provided an opportunity to pass on the Commission's action. At least one commenter in this proceeding has raised the lawfulness issue anew. See Comments of Digital Satellite Broadcasting Corp. at 3-4 and Appendix A.

its present review of the pioneer's preference rules to delay or  
impede the finalization of that determination.

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November 22, 1993

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**CERTIFICATE OF SERVICE**

I, Katharine B. Squalls, do hereby certify that a true and correct copy of the foregoing "Reply Comments of TRW Inc." was mailed, first-class postage prepaid, this 22nd day of November 1993 to the following:

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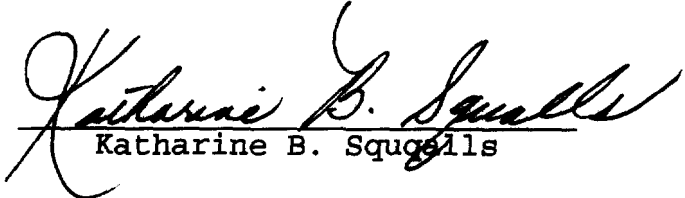
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